



DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED-2022-OESE-0151]

Proposed Priorities, Requirements, and Definitions--State Tribal Education Partnership Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed priorities, requirements, and definitions.

SUMMARY: The Department of Education (Department) proposes priorities, requirements, and definitions under the State Tribal Education Partnership (STEP) program, Assistance Listing Number (ALN) 84.415A. The Department may use one or more of these priorities, requirements, and definitions for competitions in fiscal year (FY) 2023 and later years. The Department is taking this action to support the development of partnerships among Tribal education agencies (TEAs), State educational agencies (SEAs), and local educational agencies (LEAs) to support the creation or expansion of TEAs to directly administer education programs, including formula grant programs under the Elementary and Secondary Education Act of 1965, as amended (ESEA), consistent with State law and under a written agreement among the parties.

DATES: We must receive your comments on or before [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at [regulations.gov](https://www.regulations.gov). However, if you require an accommodation or cannot otherwise submit your comments via [regulations.gov](https://www.regulations.gov), please contact the program contact person listed under FOR FURTHER INFORMATION CONTACT. The Department will not accept comments by fax or by email, or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to [Regulations.gov](https://www.regulations.gov) to submit your comments electronically. Information on using [Regulations.gov](https://www.regulations.gov), including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "FAQ."

Privacy Note: The Department's policy is to generally make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [Regulations.gov](https://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Donna Bussell, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W207, Washington, DC 20202-6450. Telephone (202) 987-0204. Email: donna.bussell@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities, requirements, and definitions. To ensure that your comments have maximum effect in developing the final priorities, requirements, and definitions, we urge you to clearly identify the specific section of the proposed priority, requirement, or definition that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, and definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect public comments about the proposed priorities, requirements, and definitions by accessing Regulations.gov.

To inspect comments in person, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this document. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program: The purpose of the STEP program is to: promote Tribal self-determination in education; improve the academic achievement of Indian children and youth; and promote the coordination and collaboration of TEAs with SEAs and LEAs to meet the unique educational and culturally related academic needs of Indian students.

Program Authority: Section 6132 of the ESEA (20 U.S.C. 7452).

Tribal Consultation: The following proposed priorities, requirements, and definitions were informed by Tribal consultation with elected Tribal leaders or their officially designated proxies. The Department held virtual Tribal consultations on April 26, 2021 and June 30, 2022, and announced the opportunities through various external community listservs. The Department sought feedback from

elected Tribal leaders on a series of topics and 12 questions to inform the design of future STEP competitions. They are as follows:

First, the Department requested input on the length of grant performance periods, specifically if Tribal Nations were interested in longer grant performance periods (e.g., one year versus three years). The majority of Tribal leaders who provided input were in favor of three-year grants and provided written comments expressing the need for additional time to complete grants to create TEAs. Tribal leaders were also in favor of the Department awarding more grants to expand TEAs. The Department will factor in this Tribal leader input during the development of future notices inviting applications. The grant period is specified in statute, subject to amendment by congressional appropriation and is not directly addressed by this document.

Second, the Department requested input on whether Tribal Nations are more interested in working partnerships with SEAs or LEAs. The majority of Tribal leader comments expressed the perspective that those partnerships should include both SEAs and LEAs and should be rooted in Tribal consultation at the local level. Tribal leaders also supported the need for partnerships to include both entities. In response to the comments, the Department is proposing Priority 3 to enhance Tribal consultation at the

local level and encourage trilateral working relationships among TEAs, SEAs, and LEAs.

Third, the Department requested input from Tribal Nations on whether resources should be targeted toward coordinating staff, curriculum, or other existing grant opportunities. The majority of Tribal leader input expressed the need to coordinate curriculum development and existing grant opportunities. Other participants supported targeting grant resources to funding the hiring of TEA staff. In response to the comments, the Department is proposing Priority 2 to increase coordination with ESEA title VI, part A formula programs. Coordinating with title VI, part A formula programs will help ensure TEAs have a proactive role in contributing to determining the best use of educational resources and can help strengthen the ability of TEAs and LEAs to train and retain respective program staff.

Fourth, the Department requested Tribal Nations to identify the supports needed to create a new TEA. The majority of Tribal leader input expressed the need to identify and expand Tribal services and to identify off-reservation students. Other participants expressed that all Tribal Nations need to finance a new TEA with Tribal funding and consolidate education-related services into one agency. In response to the comments, the Department is proposing Priority 1 to improve visibility and

identification of Indian children and youth in public education data.

Fifth, the Department requested input from Tribal Nations on whether developing Tribal education regulatory codes is necessary for creating a TEA. The majority of Tribal leader input expressed that Tribal education codes are not necessary to create a new TEA. Other participants expressed interest in seeing examples of Tribal education codes. In response to the comments, the Department is proposing to not include Tribal education codes for the creation of a "new TEA". Education codes are still included in the definition of an "established TEA" in this document. Examples of Tribal education codes may be shared during pre-application technical assistance webinars.

Sixth, the Department requested input from Tribal Nations on whether creating a new TEA required more than a one-year performance period. The majority of Tribal leader input expressed that creating a new TEA requires more than one year and may take anywhere from two to three years. In response to the comments, the Department will factor in this Tribal leader input during the development of future notices inviting applications to the degree permissible by law.

Seventh, the Department requested input from Tribal Nations on whether there should be requirements, in addition to those in past competitions, for future STEP

grants to create a TEA. The majority of Tribal leaders expressed the need for projects to include a comprehensive plan to implement non-direct services. The plan should align with Tribal needs and priorities. Other participants expressed that applicants or grantees, as appropriate, should be required to assess educational infrastructure needs, evaluate SEA and LEA training and other services provided to the TEA, and improve access to professional development opportunities for TEA leaders. In response to the comments, the Department will factor in this Tribal leader input during the development of future competitions to the degree permissible by law.

Eighth, the Department requested input from Tribal Nations on how to define "capacity building" as it relates to expanding or creating a TEA. The majority of Tribal leaders expressed that the definition needs to be specified in the final agreement with the SEA and LEA. Other participants recommended that the Department define "capacity building" as the ability to authorize teaching certifications. The Department has addressed the input on capacity building by including authorization of teaching certifications as one of the criteria within the definition of "established TEA" in this document.

Ninth, the Department requested input from Tribal Nations on whether they are interested in collaborating with SEAs to develop, monitor, and evaluate effective

culturally responsive practices. No Tribal leaders or other participants provided input on the question.

Tenth, the Department requested input from Tribal Nations on whether they are interested in collaborating with LEAs to develop, monitor, and evaluate effective culturally responsive practices. The majority of Tribal leader input and other participants were in favor of TEAs and LEAs working together in this way. Tribal leader input expressed that TEAs should work with at least three LEAs that are required to engage in local Tribal consultation as described in section 8538(a) of the ESEA. In response to the comments, the Department is proposing Priority 3 to encourage more frequent consultation between an affected LEA and TEA. The Department is not requiring consultation with at least three LEAs due to the likelihood that a TEA may not have the capacity to maintain an ongoing relationship with three LEAs who meet the definition of "Affected LEA" in this document.

Eleventh, the Department requested input from Tribal Nations on whether training from the SEA to the TEA should be targeted toward data collection and analysis; grants management and monitoring; fiscal accountability; and/or other training needs. Tribal leaders were asked to prioritize by rank order. The majority of Tribal leader input expressed the need for focused training on data collection, data analysis, grants management, and

monitoring, in that order. Other participants were in favor of more training regarding fiscal accountability. In response to the comments, the Department will factor in the need for training regarding data collection and analysis, grants management, and monitoring. In addition, proposed Priority 1, which is designed to address the under-identification of Indian students in public education data, reflects the importance of data collection and analysis for STEP projects. Through projects that address proposed Priority 1, Tribal Nations that want to exercise more self-determination in public education could assist LEAs in the improvement of data collection and analysis with a specific focus on improved identification of Indian students.

Twelfth, the Department requested input from Tribal Nations regarding which priorities should be considered in the next competition. Tribal leaders expressed that STEP grants should advance and support local Tribal consultation practices, especially for TEAs that have at least three LEAs required to conduct local Tribal consultation under ESEA section 8538(a). Other participants indicated that future priorities should include support for Tribal Nations to authorize Tribal schools. In response to the comments, the Department does not propose a priority specifically for authorizing tribal schools, however, it does continue to support the creation of new TEAs which may include Tribal schools. The Department proposes Priority 4 for Tribal

Nations that have not received a STEP grant from the Department. Additionally, the Department proposes Priority 3 to have STEP grants support local Tribal consultation practices.

PROPOSED PRIORITIES:

This document contains the following seven proposed priorities:

Proposed Priority 1 - Improve Identification of Native Students in Public Education Data.

Proposed Priority 2 - Increase Coordination of Indian Education Programs.

Proposed Priority 3 - Enhance Tribal Consultation.

Proposed Priority 4 - New STEP Grantees.

Proposed Priority 5 - Create TEA.

Proposed Priority 6 - Expand Early TEA.

Proposed Priority 7 - Expand Established TEA.

Background: In FY 2012, the Department piloted the first cohort of STEP grants to TEAs to promote increased collaboration between TEAs and SEAs in the administration of certain State-administered ESEA formula grant programs and build the capacity of TEAs to conduct certain State-level administrative functions under those programs for eligible schools located on a reservation. By the beginning of the second year of their 3-year projects, all four STEP pilot grantees had assumed at least one State-level function, with two grantees assuming two functions,

for a total of six State-level functions. In FY 2015, the Department awarded another cohort of STEP grants to TEAs to promote increased collaboration between TEAs and the SEAs and LEAs that serve students from the affected Tribes, and to build the capacity of TEAs to conduct certain administrative functions under certain ESEA formula grant programs for eligible schools, as determined by the TEA, SEA, and LEA. By the beginning of the second year of their projects, all five STEP grantees assumed SEA- or LEA-level functions, as described in their final agreements. STEP was included specifically in the 2015 reauthorization of the ESEA, and by statute includes two types of grants: grants that support establishing new TEAs and grants for expanding TEA capacity. The ESEA set out grant periods for each type of grant: one year for establishing new TEAs and three years for expanding TEA capacity. In FY 2019, the Department awarded one-year STEP grants to Tribes to support Tribes' creation of TEAs so that they would be eligible to apply for a three-year STEP grant in future fiscal years. That competition included an invitational priority, "Promoting Sustainability through Community Engagement." In FY 2020, the Department awarded three-year STEP grants to TEAs to directly administer education programs, build capacity to administer and coordinate education programs, and receive training and support from and provide training and support to SEAs and LEAs. The

Department established three absolute priorities via a waiver of rulemaking for the FY 2020 competition. Absolute Priority 1 supported projects to build TEA capacity to administer and coordinate education programs; Absolute Priority 2 was for established TEAs; and Absolute Priority 3 was for TEAs with limited prior experience. All applicants were required to address Absolute Priority 1. Absolute Priorities 2 and 3 allowed the Department to consider applications from TEAs with limited prior experience separately from applications from TEAs with more experience. In FY 2021, the Department conducted Tribal consultation with elected Tribal leaders and their proxies to discuss priorities, requirements, and definitions for future STEP competitions. For FY 2022, Congress authorized awards for up to five years for STEP grants through the appropriations process.

Additionally, under section 6132(c)(1) and (2) of the ESEA, the Department has authority to give priority to applicants that propose to create a new TEA or that propose to expand an existing TEA. Under proposed Priorities 5, 6, and 7, the Department prioritizes projects that create "new TEAs," expand capacity of "early TEAs," and expand capacity of "established TEAs" to help ensure Tribal Nations have options to equitably advance Tribal self-determination.

Proposed Priority 1 - Improve Identification of Native Students in Public Education Data.

Background: The Department proposes this priority to assist Tribal Nations interested in expanding TEA capacity through coordinating TEA and LEA enrollment data. The priority would advance Tribal self-determination in education by creating a condition for partner SEAs or LEAs to better coordinate services and identify students who are eligible for other Indian education programs but might not be receiving services. Under section 6132(a)(3) of the ESEA, one purpose of the STEP program is to “meet the unique educational and culturally related academic needs” of Indian students. To do so, it is critical that Indian students are accurately identified as Indian by the LEA. Limited access to meaningful, quality data continues to be a challenge that adversely impacts Tribal communities related to the issue of under-identification of Indian students and subsequently under-resourcing. Data are essential for developing effective policies and initiatives to generate improved health and other outcomes.¹ By partnering with LEAs, a TEA may disclose a list of students who are tribally enrolled and/or affiliated to the LEA and the LEA can match and notify the parents regarding Indian education program opportunities, without disclosing the identity of eligible students to a TEA. In addition to improving delivery of equitable supports for Indian children and youth, we believe a collaboration focused on

¹ www.ncai.org/DataDisaggregationA IAN-report_5_2018.pdf.

better identification of Indian students will build TEA capacity in collecting and analyzing data, consistent with Tribal consultation input, and help advance Tribal self-determination in public education.

Note: The Family Educational Rights and Privacy Act (FERPA) does not permit an LEA to disclose personally identifiable information (PII) from students' education records to a TEA without parental consent unless the disclosure meets one of FERPA's exceptions to the general consent requirement. The most relevant exceptions to FERPA's general consent requirement that may apply if certain conditions are met are the "school official," "studies," and "audit/evaluation" exceptions. For further information on FERPA, contact the Department's Student Privacy Policy Office at <https://studentprivacy.ed.gov/>.

Proposed Priority:

To meet this priority, an applicant must propose to partner with an LEA to develop and maintain effective and culturally responsive methods to better identify, and support the identification of, Indian students who may be undercounted or under-identified as eligible for an ESEA title VI formula grant program consistent with section 6112 of the ESEA. This includes identifying Indian students who are not enrolled in a Tribal Nation but who have affiliation with or descendance from a Tribal Nation as described in ESEA section 6117(d).

Proposed Priority 2 - Increase Coordination of Indian Education Programs.

Background: The Department proposes this priority to assist Tribal Nations in ensuring that services under existing Indian education programs are coordinated as part of a comprehensive approach to serving Indian students. TEAs do not have purview over all Indian education programs in a given LEA, especially if TEA personnel are not identified as the authorized representative of a particular grant award. However, TEAs have direct access to cultural resources, methods, and knowledge and can provide expertise regarding culturally appropriate ways to educate and teach Indian students. One example of how a STEP grantee could meet this priority would be for the grantee to coordinate with a partner LEA that receives both a Johnson-O'Malley and an ESEA title VI Indian Education formula grant on strategies and professional development opportunities to further a culturally-appropriate education approach that benefits Indian students, TEA, and LEA staff. (Note: Consistent with ESEA section 6132(e)(2), STEP grants may not be used for direct services.) This proposed priority would also help ensure TEAs are working in collaboration with LEAs, consistent with section 6132(a) of the ESEA.

Proposed Priority:

To meet this priority, an applicant must submit a high-quality plan that describes how it will strengthen its

partnership with the LEA and/or SEA, to strengthen coordination among all existing federally funded Indian education grants that impact the partner LEA and/or SEA to support the academic achievement of Indian students. The plan must include goals, milestones, and timelines for coordination, and must identify which existing federally funded programs they are coordinating.

Proposed Priority 3 - Enhance Tribal Consultation.

Background: The Department proposes this priority to assist Tribal Nations to expand their capacity to participate in, and strengthen, local Tribal consultation practices. For example, to address this proposed priority, applicants could propose a plan to assist LEAs in the effort to obtain consultation affirmations that are meaningful, data-driven, and timely. The proposed priority would advance Tribal self-determination in education by supporting TEAs to convene collaborative meetings with SEAs and LEAs to promote meaningful consultation that produces ongoing and timely feedback on federally funded education programs that impact Indian students, not just programs that serve only Indian students. This proposed priority would address Tribal leader interest in seeing a priority that furthers collaboration and consultation with affected LEAs that are subject to ESEA section 8538 consultation requirements. Affected LEAs subject to section 8538 must consult Tribal Nations annually regarding multiple Federal

programs, and TEAs can help drive more meaningful collaboration to support Federal program implementation. The goal of the proposed priority is for TEAs to increase the frequency of consultations, develop meaningful consultation procedures, and meet goals as defined in the respective ESEA Consolidated State and Local Plans.

Proposed Priority:

Projects to improve upon existing local Tribal consultation efforts with at least one LEA. To meet this priority, applicants must provide a high-quality plan that describes how the project will increase the frequency of consultations with affected LEAs, meaningfully develop consultation procedures with LEAs, and meet SEA goals as defined in the respective ESEA Consolidated State and Local Plans.

Proposed Priority 4 - New STEP Grantee.

Background: In Tribal Consultations held on April 26, 2021 and June 30, 2022, Tribal leaders requested that the Department move away from determining grants on a competitive basis because all Tribes could benefit from the STEP program, but some Tribes are not as well positioned to compete for the STEP program. However, under 2 CFR 200.205, the Department must award STEP program grants on a competitive basis. The Department proposes this priority to help applicants who have not previously received a STEP grant. The proposed priority would advance Tribal self-

determination in education by assisting TEAs with less capacity to be competitive among their peer TEAs.

Proposed Priority:

To meet this priority, an applicant must be a new TEA or early TEA and must not have previously received a STEP award from the Department.

Proposed Priority 5 - Create a TEA.

Background: Under section 6132(c)(1) of the ESEA, the Department is authorized to make awards to applicants who plan and develop a TEA, if the Indian Tribe or organization has no current TEA.

Proposed Priority:

To meet this priority, an applicant must not be an early TEA or established TEA.

Proposed Priority 6 - Expand Capacity of Early TEAs.

Background: Under section 6132(c)(2) of the ESEA, the Department is authorized to make awards to TEAs to expand their existing capacity.

Proposed Priority:

To meet this priority, an applicant must be an early TEA.

Proposed Priority 7 - Expand Capacity of Established TEAs.

Background: Under section 6132(c)(2) of the ESEA, the Department is authorized to make awards to TEAs to expand their existing capacity.

Proposed Priority:

To meet this priority, an applicant must be an established TEA.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the *Federal Register*. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Application Requirement:

Background: The Department proposes the following application requirement. Under section 6132(d)(2)(C)(i) of the ESEA, a preliminary agreement with the appropriate SEA, one or more LEAs, or both the SEA and LEA must be an application requirement. In any competition, the Department could use additional statutory application requirements consistent with section 6132(d) of the ESEA.

Proposed Application Requirement 1 - Draft Written Agreement with Partners.

An applicant must provide a Draft Written Agreement (DWA), with the appropriate SEA and/or LEA partner(s). For applicants creating a new TEA, a DWA is only required with an LEA. For applicants expanding capacity for an early TEA or established TEA, a DWA with both an SEA and LEA is required.

Proposed Program Requirements:

Background: The Department proposes three program requirements. The first proposed program requirement, which would require grantees to hire a project director within 60 days of the grant award notification, would help ensure staffing capacity is promptly developed so that the project objectives can be timely met and addressed with fidelity. The second proposed program requirement, which would require grantees to have a finalized written agreement with partners, is intended to ensure that the parties joining the project are committed to fulfilling the

purpose of the STEP program by either creating a new TEA or expanding an existing TEA. Both proposed program requirements would advance Tribal self-determination and help the TEA eventually administer an education program, or prepare to administer an education program, on behalf of an LEA or SEA.

The second program requirement is to ensure the applicant and its SEA and LEA partners, as applicable, have a demonstrated commitment to either create a new, or expand an existing, TEA and have considered the allocation of roles and responsibilities necessary to carry out the project. In addition, this program requirement would ensure a commitment to deliverables that advance the project goals and timeline. This proposed program requirement would advance Tribal self-determination and would help the TEA eventually administer an education program, or prepare to administer an education program, on behalf of an LEA or SEA. The draft agreement would allow applicants to be eligible for the program even though agreements may not be finalized in time for application submission.

In any competition, the Department could use one or more of the proposed program requirements in addition to statutory program requirements under section 6132 of the ESEA. The proposed program requirements are:

Proposed Program Requirement 1 - Hire Project Director within 60 Days.

Grantees must hire a project director as soon as practicable, but no later than 60 days after the beginning of the performance period.

Proposed Program Requirement 2 - Final Written Agreement with Partners.

Grantees must submit a final written agreement signed by all parties entering into the agreement within 120 days after receiving the grant award notification.

PROPOSED DEFINITIONS:

Background: The Department proposes to define the following terms for use in its STEP program competitions. Each of the defined terms is intended to provide clarity to applicants, grantees, and their partners with respect to the priorities and both the statutory and proposed application and program requirements, which we believe will help advance the ability of TEAs to exercise Tribal self-determination in public education.

Specifically, the Department is proposing the definition of "directly administer," which is based on the definition in section 8538 of the ESEA, to advance the ability of TEAs to exercise Tribal self-determination in public education. Section 6132(c)(2)(A) of the ESEA requires directly administering education programs including formula grant programs under the ESEA consistent

with State law and written agreements between parties but does not define this term. To clarify responsibilities under this statutory program requirement, the Department proposes to define "directly administer." Direct administration enables TEAs to become the fiscal agents and subsequently become financially responsible for the administration of project objectives, funds, and reporting.

The Department derived its proposed definition of TEA from ESEA section 6132. However, we propose to expand the definition of TEA to include a TEA that includes an agency, department, or instrumentality of more than one Tribe if the Tribes are in close geographic proximity or have cultural connections to each other and agree through joint Tribal government resolution to have a combined TEA. The proposed change is responding to the request from Tribal leaders to award grants through a non-competitive process. This will allow Tribes with minimal capacity to advance common interests and promote Tribal self-determination in public education.

The Department proposes to further define "established TEA" and "early TEA" to meaningfully differentiate between STEP projects that propose to create a new TEA versus expanding an early TEA or expanding an established TEA. The rationale behind the cutoffs were to quantifiably differentiate while making grants more accessible to TEAs in early stages of development. The definitions are

intended to help applicants better identify the priority that applies to their proposed project.

The Department proposes to define "Tribal consultation" to clarify the purpose of the consultation, the roles and responsibilities of all parties, and the need to acquire Tribal affirmation that the consultation has been conducted in accordance with the requirements. The written affirmation would ensure that the appropriate Tribal Nations were participating partners. The Department proposes to define "Affected LEA," which is based on the definition in section 8538 of the ESEA.

In any competition, the Department could use one or more of these proposed definitions in addition to any statutory definitions. The proposed definitions are:

Affected LEA means a local educational agency--

(1) With an enrollment of American Indian or Alaska Native students that is not less than 50 percent of the total enrollment of the local educational agency; or

(2) For any fiscal year following fiscal year 2017, that received a grant in the previous fiscal year under subpart 1 of part A of title VI that exceeded \$40,000.

Directly administer means conducting, as the fiscal agent, SEA functions or LEA functions for education programs, including ESEA formula grant programs, consistent with State law and the FWA.

Draft written agreement (DWA) means an unsigned written agreement with an attached letter of support from each LEA or SEA partner indicating each has reviewed the project plan and will finalize the DWA into an FWA within 120 days of grant award notification. The DWA must include the following:

- (1) The roles and responsibilities for each partner.
- (2) An agreed-upon list of deliverables (Note: deliverables cannot be direct services to Indian students).
- (3) Identification of at least one point of contact for each partner.
- (4) A description of the resources each partner will contribute to the project (Note: resources do not need to be monetary or matching funds).

Early TEA means a TEA that meets one or two of the criteria in the definition of established TEA.

Established TEA means a TEA that meets three or more of the following criteria:

- (1) Has received a STEP grant in 2012 or subsequent years, or has an existing prior relationship with an SEA or LEA as evidenced by an FWA between the TEA and SEA or LEA.
- (2) Has an existing Tribal education code.
- (3) Has directly administered at least one education program within the past five years.
- (4) Has administered at least one Federal, State, local, or private grant within the past five years.

(5) Has authorized teaching certifications.

Final written agreement (FWA) means a signed written agreement between the TEA and the LEA or SEA; the TEA and one or more LEAs; or the TEA and both an SEA and one or more LEAs, that documents the commitment and timeline of the agreeing partners to implement the terms and conditions specified in the DWA.

New TEA means a Tribal entity that does not meet the definition of "early TEA" or "established TEA."

Tribal consultation means that—

(1) The SEA or LEA provides Tribes the opportunity for input;

(2) The SEA or LEA consider and respond to the input from Tribal leaders or their officially designated proxies regarding an education program that affects the Tribal Nation or TEA; and

(3) The partner Tribal Nation provides written confirmation that the consultation was meaningful and in good faith.

Tribal educational agency (TEA) means the agency, department, or instrumentality of an Indian Tribe that is primarily responsible for supporting Tribal students' elementary and secondary education. This term also includes an agency, department, or instrumentality of more than one Tribe if the Tribes are in close geographic proximity or have cultural connections to each other and

agree through joint Tribal government resolution to have a combined TEA.

Note: This document does not solicit applications. In any year in which we choose to use any of the final priorities, requirements, and definitions, we invite applications through a notice in the *Federal Register*.

Final Priorities, Requirements, and Definitions: The Department will announce the final priorities, requirements, and definitions in a document in the *Federal Register*. We will determine the final priorities, requirements, and definitions after considering responses to the proposed priorities, requirements, and definitions and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, or definitions, subject to meeting applicable rulemaking requirements.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs

(recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that

might result from technological innovation or anticipated behavioral changes.”

We are issuing the proposed priorities, requirements, and definitions only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential benefits of this regulatory action are the increased specificity of application requirements, program requirements, and definitions that will support effective program implementation that advances Tribal self-determination between TEAs, SEAs, and LEAs. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department’s programs and activities. The proposed priorities, requirements, and definitions would impose

minimal costs on entities that would receive assistance through the STEP program. Application submission and participation in the STEP program is voluntary. The Secretary believes that the costs imposed on applicants by the proposed priorities, requirements, and definitions would be limited to paperwork burden related to preparing an application for the STEP program. Because the costs of carrying out activities would be paid for with STEP program funds, the costs of implementation would not be a burden for any eligible applicants, including small entities.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make these proposed priorities, requirements, and definitions, easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the ADDRESSES section.

Paperwork Reduction Act

The proposed priorities, requirements, and definitions contain information collection requirements that are approved by OMB under OMB control number 1894-0006; the proposed priorities, requirements, and definitions do not affect the currently approved data collection.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action would not have a substantial economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if

they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

Although some of the Alaska Native Organizations, LEAs, and other entities that receive STEP program funds qualify as small entities under this definition, the proposed priorities, definitions, and requirements would not have a significant economic impact on these small entities. The Department believes that the costs imposed on an applicant by the proposed priorities, requirements, and definitions would be limited to the costs related to providing the documentation outlined in the proposed priorities, definitions, and requirements when preparing an application and that those costs would not be significant.

Participation in the STEP program is voluntary. We expect that in determining whether to apply for STEP funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs and weigh them against the benefits likely to be achieved by receiving a STEP grant. An eligible entity will probably apply only if it determines that the likely benefits exceed the costs of preparing an application.

We invite comments from small entities as to whether they believe the proposed priorities, requirements, and definitions would have a significant economic impact on

them and, if so, we request evidence to support that belief.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

Accessible Format: On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or another accessible format.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the *Federal Register*, in text or Portable Document

Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the *Federal Register* by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

James F. Lane,

Senior Advisor, Office of the Secretary,

Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary,

Office of Elementary and Secondary Education.

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